

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ARTHUR BELFIORE,

Plaintiffs,

-against-

979 THIRD AVENUE ASSOCIATES, LLC, D&D  
BUILDING COMPANY, LLC, COHEN BROTHERS  
REALTY CORPORATION and TRICON  
CONSTRUCTION SERVICES, INC.,

Defendants.

***ANSWER TO COUNTERCLAIM  
CROSS-CLAIMS***

***Case No. 08-CV-2365 (LAP)(RLE)***

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979 THIRD AVENUE ASSOCIATES, LLC, D&D  
BUILDING COMPANY, LLC, COHEN BROTHERS  
REALTY CORPORATION

Third-Party Plaintiffs,

-against-

DAVID SUTHERLAND SHOWROOMS – NEW YORK,  
LLC

Third-Party Defendant.

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TRICON CONSTRUCTION SERVICES, INC.,

Third-Party Plaintiff,

-against-

ALL KINDZA FLOORING, INC.,

Third-Party Defendant.

-----X  
Defendant, TRICON CONSTRUCTION SERVICES, INC., by its attorneys, ABRAMS,

GORELICK, FRIEDMAN & JACOBSON, P.C., as and for its Answer to Third-Party Defendant

DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Cross-Claims and Counter-Claims allege, upon information and belief, as follows:

CROSS-CLAIM FOR INSURANCE COVERAGE AGAINST DEFENDANT TRICON CONSTRUCTIONS SERVICES, INC.

1. To the extent that a response to paragraph “18” of the Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Cross-Claim is required, defendant TRICON CONSTRUCTION SERVICES, INC. denies each and every allegation contained in paragraph “18” and defendant TRICON CONSTRUCTION SERVICES, INC. refers all questions of law to the Court for determination.

2. Denies each and every allegation set forth in paragraph “19” of the Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Cross-Claim.

3. To the extent that a response to paragraph “20” of the Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Cross-Claim is required, defendant TRICON CONSTRUCTION SERVICES, INC. denies each and every allegation contained in paragraph “20” and defendant TRICON CONSTRUCTION SERVICES, INC. refers all questions of law to the Court for determination.

COUNTERCLAIM FOR COMMON LAW INDEMINIFICATION AGAINST DEFENDANT TRICON CONSTRUCTIONS SERVICES, INC.

4. Denies each and every allegation set forth in paragraph “21” of the Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim.

5. To the extent that a response to paragraph “22” of the Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim is required, defendant TRICON CONSTRUCTION SERVICES, INC. denies each and every allegation

contained in paragraph “22” and defendant TRICON CONSTRUCTION SERVICES, INC. refers all questions of law to the Court for determination.

6. To the extent that a response to paragraph “23” of the Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim is required, defendant TRICON CONSTRUCTION SERVICES, INC. denies each and every allegation contained in paragraph “23” and defendant TRICON CONSTRUCTION SERVICES, INC. refers all questions of law to the Court for determination.

COUNTERCLAIM FOR CONTRACTUAL INDEMINIFICATION AGAINST DEFENDANT  
TRICON CONSTRUCTIONS SERVICES, INC.

7. Denies each and every allegation set forth in paragraph “24” of the Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim.

8. Denies any knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph “25” of Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim, and defendant TRICON CONSTRUCTION SERVICES, INC. begs leave to refer to the contract/agreement/lease for its terms, provisions, limits and conditions.

9. To the extent that a response to paragraph “26” of the Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim is required, defendant TRICON CONSTRUCTION SERVICES, INC. denies each and every allegation contained in paragraph “26” and defendant TRICON CONSTRUCTION SERVICES, INC. refers all questions of law to the Court for determination.

10. To the extent that a response to paragraph “27” of the Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim is required, defendant TRICON CONSTRUCTION SERVICES, INC. denies each and every allegation

contained in paragraph “27” and defendant TRICON CONSTRUCTION SERVICES, INC. refers all questions of law to the Court for determination.

11. Denies any knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph “28” of Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim.

COUNTERCLAIM FOR COMMON LAW NEGLIGENCE AGAINST DEFENDANT TRICON CONSTRUCTIONS SERVICES, INC.

12. Denies each and every allegation set forth in paragraph “29” of the Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim.

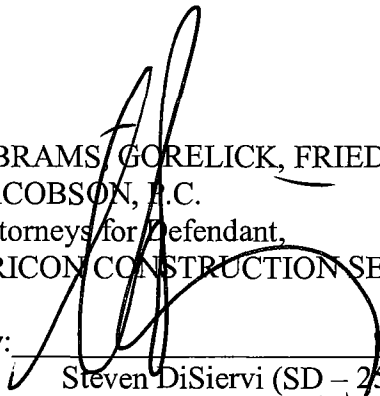
13. To the extent that a response to paragraph “30” of the Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim is required, defendant TRICON CONSTRUCTION SERVICES, INC. denies each and every allegation contained in paragraph “30” and defendant TRICON CONSTRUCTION SERVICES, INC. refers all questions of law to the Court for determination.

14. To the extent that a response to paragraph “31” of the Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Counterclaim is required, defendant TRICON CONSTRUCTION SERVICES, INC. denies each and every allegation contained in paragraph “31” and defendant TRICON CONSTRUCTION SERVICES, INC. refers all questions of law to the Court for determination.

WHEREFORE, the answering defendant, TRICON CONSTRUCTION SERVICES, INC., demands judgment dismissing Third-Party Defendant DAVID SUTHERLAND SHOWROOMS – NEW YORK, LLC’s Cross-Claims and Counter-Claims as to it, together with the costs and disbursements of this action, or, in the alternative, demands that the ultimate rights of the plaintiff, third-party defendants, answering defendant, and co-defendants, be determined in

this action with regard to all claims, counterclaims, and cross-claims and that the answering defendant have judgment over and against the plaintiff, third-party defendants, and the co-defendants, each of them, in the proportion that each of their culpable conduct bears to the entire culpable conduct involved in the occurrence, and have judgment over and against, and indemnity from the plaintiffs, third-party defendants and the co-defendants together with the costs and disbursements of this action.

Dated: New York, New York  
June 26, 2008

  
ABRAMS, GORELICK, FRIEDMAN &  
JACOBSON, P.C.  
Attorneys for Defendant,  
TRICON CONSTRUCTION SERVICES, INC.

By: \_\_\_\_\_  
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TO: Edward Wagner, Esq.  
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HOEY, KING, TOKER & EPSTEIN  
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979 THIRD AVENUE ASSOCIATES, LLC,  
D&D BUILDING COMPANY, LLC, and  
COHEN BROTHERS REALTY CORPORATION  
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Kenneth B. Brown, Esq.  
LAW OFFICE OF JOHN P. HUMPHREYS

Attorneys for Third-Party Defendant  
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New York, New York 10017  
(917) 778-6600  
Matter No.: 0921679KB

ALL KINDZA FLOORING  
c/o Donna Connolly  
484 Hawkins Avenue  
Ronkonkoma, New York 11779

STATE OF NEW YORK     )  
  )ss.:  
COUNTY OF NEW YORK    )

Gerardo Soler, being duly sworn, deposes and says:

I am not a party to the within action; I am over 18 years of age; I reside in New York, New York.

On June 26, 2008, I served the within Notice for Discovery and Inspection upon:

Edward Wagner, Esq.  
WAGNER & WAGNER, LLP  
Attorney for Plaintiff  
2508 Amboy Road  
Staten Island, New York 10306  
(718) 667-7400

Angela P. Pensabene, Esq.  
HOEY, KING, TOKER & EPSTEIN  
Attorneys for the Defendants  
979 THIRD AVENUE  
ASSOCIATES, LLC, D&D BUILDING  
COMPANY, LLC, and COHEN  
BROTHERS REALTY CORPORATION  
55 Water Street  
29<sup>th</sup> Floor  
New York, New York 10041-2899  
(212) 612-4200

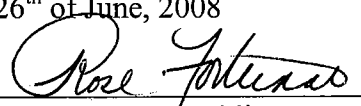
Kenneth B. Brown, Esq.  
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Seventh Floor  
New York, New York 10017  
(917) 778-6600

ALL KINDZA FLOORING  
c/o Donna Connolly  
484 Hawkins Avenue  
Ronkonkoma, New York 11779

at the above address(es) by depositing a true copy of same, enclosed in a properly addressed postpaid wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

  
Gerardo Soler

Sworn to before me this  
26<sup>th</sup> of June, 2008

  
Notary Public

ROSE FORTUNATO  
COMMISSIONER OF DEEDS  
CITY OF NEW YORK NO. 5-732  
CERTIFICATE FILED IN RICHMOND COUNTY  
COMMISSION EXPIRES MAY 1, 20 10

